IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 640 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GULABSINH BALUSINH PARMAR - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR PANKAJ K SONI for Appellant
MS ML SHAH, APP for Respondent - State

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 10/05/2007

CAV JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1. This appeal is directed against the judgement and order dated 20th June 2005 passed by learned Additional Judge, Fast Track Court No.2, City Civil and Sessions Court, Ahmedabad in Sessions Case No.267 of 2004 whereby the appellant has been convicted for the offences punishable under sections 302 and 498-A of the Indian Penal Code. For the offence under section 302 of the IPC, the appellant has been sentenced to rigorous imprisonment for life and a fine of Rs.2000/- and in default simple imprisonment for two months and for the offence under section 498A of the IPC, he has been sentenced to rigorous imprisonment for three years and a fine of Rs.1000/- and in default to undergo simple imprisonment for two months.
2. Mr.P.K.Soni, learned Advocate for the appellant had submitted that he has a copy of the relevant record necessary for deciding the appeal. However, by order dated 8/3/2007, the record and proceedings of the case had been called for from the trial Court. Pursuant to the said order, the record and proceedings have been received by this Court and after giving the learned Advocates appearing for the parties an opportunity of going through the same, the matter has been taken up for hearing.

3. The case of the prosecution is that at about 6:00 hours in the morning of 26th November, 2003 when the deceased Champaben was sleeping in a cot, the accused who is her husband, poured

kerosene on her and set her ablaze with the help of a matchstick. Upon hearing her cries, the neighbours rushed to the spot and tried to put out the fire by sprinkling water over her. At about 7:50 a.m. Champaben was brought to the Civil Hospital where she was initially treated by Dr. Bhavin Shyamlal Shah, Medical Officer, Civil Hospital, before whom she gave history that her husband had set her ablaze while she was sleeping in the cot in the morning.

4. The Medical Officer informed the police at the Civil Hospital. The concerned police in turn informed the PSO, Naranpura Police Station, Ahmedabad, pursuant to which an entry was made in the Station Diary at 8:10 A.M. Shri Shanabhai Mulabhai Parmar was discharging duties as Police Sub-Inspector at Naranpura Police Station on 26/11/2003 when he received vardhy (Exh.36) from the PSO, pursuant to which he went to the burns section of the Civil Hospital and recorded the complaint (Exh.37) given by the injured Champaben. After recording the complaint, he forwarded the same to the PSO, Naranpura Police Station vide report Exh.38, who registered the same as Naranpura Police Station I Cr.R.No.727/2003 for the offences punishable under Sections 307 and 498A of the Indian Penal Code, at 12.15 a.m. Thereafter, the PSO, Naranpura Police Station sent back the FIR and other papers along with his endorsement to PSI Shri Parmar for investigation. In pursuance whereof, Shri

Parmar took charge of the investigation and kept all the papers in the investigation file. He issued a yadi (Exh.25) to the Executive Magistrate for the purpose of recording Dying Declaration of the victim as her physical condition was deteriorating. While preparing the yadi, the Investigating Officer obtained endorsement thereon, from the Doctor present there, that the patient is conscious and able to speak. Upon receipt of the yadi, the Executive Magistrate visited the hospital and recorded the dying declaration of the deceased. The Investigating Officer also sent yadi (Exh.40) to the FSL Officer to inspect the scene of offence. The investigating officer drew panchnama of scene of offence (Exh.39) in the presence of panchas and collected muddamal from the scene of offence and forwarded the same to the Forensic Science Laboratory along with forwarding letter (Exh.41). Subsequently, the victim succumbed to the injuries on 27/11/2003 at 12.15 p.m., therefore, the investigating officer had called panchas to prepare Inquest Panchnama and also filled up the Marnotar Form and made arrangements to send the body of the deceased for postmortem with yadi. Inquest Panchnama was drawn in the presence of panchas. The investigating officer also sent report for addition of section 302 of IPC. Thereafter, further investigation was entrusted to Police Inspector Shri Pravinsinh N. Kher who recorded the statements of witnesses, arrested the accused and seized the

clothes of the accused after following all proper procedure. Upon receipt of FSL Report and Post Mortem Report, the same were kept in the investigation file. Shri Kher was then transferred and investigation was handed over to Police Inspector Shri Suthar. Upon completion of investigation charge-sheet was submitted against the accused under Sections 302 and 498A of the Indian Penal Code before the learned Metropolitan Magistrate, Ahmedabad, which was numbered as Criminal Case No.161/04.

5. The case being exclusively triable by the Sessions Court, the learned Metropolitan Magistrate, by his order dated 2nd September, 2004 committed Criminal Case No.161/04 to the Court of City and Sessions, Ahmedabad where it was registered as Sessions Case No.267/04 and ultimately, it was transferred to the Court of Additional Sessions Judge, Fast Track Court No.2, City and Sessions Court, Ahmedabad, for disposing the same on merits.

6. The Learned Judge framed charge against the accused under sections 498A and 302 of the Indian Penal Code at Exhibit 2. The accused pleaded not guilty to the charge and prayed for trial.

7. To prove its case against the accused, the prosecution examined the following fifteen witnesses:

(i) P.W.1 – Parvatsinh Udaysinh Chauhan, Exh.6 brother of deceased Champaben.

(ii) P.W.2 – Jagdishbhai Vithalbhai Prajapati, Exh.7 neighbour of accused.

(iii) P.W.3 – Dinaben Jagdishbhai, Exh.3 neighbour, wife of PW2, she had sprinkled water on deceased Champaben to douse the fire.

(iv) P.W.4 – Shantaben Jesingbhai, Exh.9, Panch, Physical condition of deceased Champaben.

(v) P.W.5 – Rajeshri Dipakbhai Dantania, Exh.11, Sister-in-law (Bhabhi) of deceased.

(vi) P.W.6 – Anil Pitambar Parmar, Exh.12 – Panch of Inquest Panchnama.

(vii) P.W.7 – Dhanji Nagji Desai, Exh.13 Panch, Scene of offence and recovery of muddamal.

(viii) P.W.8 – Shardaben Chandubhai Thakor Exh.8.

(ix) P.W.9 – Hemantbhai Bhogilal Patel, Exh.16, Panch of Physical condition of accused and recovery of clothes of accused Panchnama.

(x) P.W.10 - Dr. Kishanlal Ramabhai Solanki, Exh.17 conducted Post mortem and submitted Post mortem report Exh.22.

(xi) P.W.11 – Vishnuprasad Labhshankar Trivedi, Executive Magistrate, Exh.23 recorded Dying Declaration Exh.26.

(xii) P.W.12 – Madhusudan Manilal Exh.27,

Panch clothes of the accused panchnama.

(xiii) P.W.13 – Pravinsinh Natwarsinh Kher, Exh.28, Second P.I., Naranpura Police Station, (Investigating Officer).

(xiv) P.W.14 – Dr. Bhavin Shyamlal Shah, Exh.30, Medical Officer Civil Hospital, recorded case history as given by deceased Champaben.

(xv) P.W.15 – Shanabhai Mulabhai Parmar, Exh.35, PSI Naranpura Police Station, registered Vardhy and recorded complaint.

8. The prosecution also produced and proved the following documentary evidence in support of its case:

(i) Panchnama of physical condition of deceased Champaben, Exh.10.

(ii) Death Report issued by Civil Hospital, Exh.19,

(iii) Application to C.M.O. Civil Hospital for conducting Post Mortem, Exh.20.

(iv) Marnotar Form, Exh.21.

(v) Post Mortem Report, Exh.22.

(vi) Yadi issued by Investigating Officer to the Executive Magistrate for recording dying declaration, Exh.25.

(vii) Dying Declaration recorded by the Executive Magistrate, Exh.26.

(viii) Panchanama of arrest of accused and seizing of clothes of accused, Exh.29.

(ix) OPD Case Papers dated 26.11.03, Exh.32.

(x) Indoor Case Papers/treatment, Exh.33.

(xi) Vardhy received by PSO Naranpura Police Station from the police at Civil Hospital, Exh.36

(xii) Complaint dated 26.11.2003, Exh.37

(xiii) Report of PSI, Parmar under section 157 of the Criminal Procedure Code for the registration of the offence, Exh.38

(xiv) Panchnama of the Scene of Offence, Exh.39

(xv) Yadi to FSL to examine scene of offence and give opinion Exh.40.

(xvi) Forwarding Note to FSL Exh.41.

(xvii) Acknowledgement Note from FSL regarding receipt of muddamal, Exh.42.

(xviii) Forwarding letter - FSL report, Exh.43

(xix) FSL Report, Exh.44.

(xx) Forwarding letter issued by FSL, Exh.45.

9. On submission of closing pursis by the learned APP, the learned Addl. Sessions Judge recorded further statement of the accused under section 313 of the Code qua incriminating evidence. The defence of the accused was in the nature of denial. The accused neither examined any witness nor stepped into the witness box.

10. After hearing the learned Advocates appearing on behalf of the respective parties, the learned Additional Sessions Judge, Fast Track Court No.2, City Civil and Sessions Court, Ahmedabad delivered the impugned judgement and order dated 20th June, 2005 whereby the accused

was convicted for the offences punishable under sections 302 and 498A of the Indian Penal Code. For the offence punishable under section 302 the accused was sentenced to suffer rigorous imprisonment for life with fine of Rs.2,000/- and in default to undergo simple imprisonment for two months and for the offence punishable under section 498A the accused was sentenced to suffer rigorous imprisonment for three years and fine of Rs.1000/- and in default to undergo simple imprisonment for two months. It was ordered that both the sentences shall run concurrently. It is the aforesaid judgement and order that has given rise to the present appeal.

11. Heard learned Advocate Shri P.K. Soni for the appellant and learned Advocate Ms. M.L. Shah for the respondent State.

12. Learned Advocate Shri Soni has sought to contend that despite a long span of married life, there was no issue from the said marriage, hence, the deceased was depressed and had committed suicide. It was submitted that most of the prosecution witnesses including the family members of the deceased as well as the panchas have not supported the case of the prosecution. Hence, the prosecution case rests solely on the so-called dying declarations recorded by Dr. Bhavin Shah, the Executive Magistrate Shri V.L. Trivedi and by the Investigating Officer, Shri S.M. Parmar. He has

submitted that the deceased had suffered extensive burns and had sustained burn injuries on both her lips; under these circumstances she was not in a position to speak constantly and coherently and as such she could not have given the said dying declarations. It was submitted that accordingly, the dying declaration cannot be believed and there being no other independent evidence, the appellant accused could not have been held guilty of the offences with which he was charged and ought to have been acquitted. Except for the contentions recorded hereinabove, no other contentions have been raised.

13. We have considered the submissions advanced by the learned Advocate and examined in detail the oral as well as documentary evidence which has been shown to us by the learned Advocate.

14. It is required to be noted that though the deceased has been set on fire by her husband and the police has been able to collect evidence to connect him with the crime, unfortunately the important witnesses like the relatives of the deceased, the neighbours of the accused and the panch witnesses have not supported the case of the prosecution. It is required to be noted that offences of bride-burning or of this type generally take place within the confines of the four walls of the house, wherein the accused is a near and dear one of the victim, and usually except for the

husband, wife or family members, no one else would be present at home. It is also required to be noted that when an incident of this nature takes place, initially the sympathy of the neighbours and relatives is with the victim. However, due to passage of time, more so as trials are not conducted within a reasonable period, people suffer from a change of mind and start thinking in a different direction to the effect that, now that the victim has left the world, no fruitful purpose would be served by making the husband suffer any more. The resultant effect is seen at the time of recording the evidence. However, the evidence led by the prosecution will not lose its significance merely because such witnesses have not supported the case of the prosecution, if the evidence led by the prosecution by way of circumstantial, scientific and other evidence is found to be reliable and trustworthy.

15. In this type of offence, generally three types of evidence are available to the investigating agency:

(1)Witnesses like family members of matrimonial house staying under the same roof and neighbours,

(2)For past incidents of physical & mental cruelty etc., witnesses like the relatives of the deceased, namely parents etc. who are

generally staying in a different town or village and hence, would generally not be eye witnesses,

(3)Other persons who are witnesses because of the nature of duties discharged by them, namely, the Medical Officers, the Executive Magistrate, Police Officers, etc.

When the trial begins, the first category of witnesses usually will not support the case of the prosecution. If there are children out of the marriage or if the matter is settled between the parties, then the second category of witnesses also will not support the case of the prosecution in the Court, though they may have raised serious grievances against all concerned at the initial stage. Therefore, the Court has to rely upon the third category of witnesses. These are the witnesses who are there for the purpose of discharging their duties. They are independent witnesses and have nothing to do with either party. Therefore, the evidence of such witnesses, if found trustworthy and reliable and free from doubts, is required to be respected and it will be sufficient evidence to connect the accused with the crime in question.

16. The evidence in the present case shall have to be evaluated keeping in mind the above aspect of the matter. In this case also the first and second category of witnesses have not supported the say of the prosecution but there are three

dying declarations on record in the form of history given by the victim before the Medical Officer which is recorded in the Medical Case Papers Exh.32, First Information Report, Exh.37 and Dying Declaration before the Executive Magistrate, Exh.26, therefore, the prosecution case rests mainly on the aforesaid three dying declaration. In the circumstances, the aforesaid evidence is required to be carefully scrutinized, but before doing so, the law in this regard is required to be kept in mind.

17. Insofar as the legal position as to whether the conviction can be based solely on the dying declaration is concerned, the Supreme Court in a catena of decisions has held that conviction can be based solely upon the dying declaration. In the case of *Paniben v. State of Gujarat*, 1993 (2) GLR 985, the Supreme Court has formulated the principles laid down in several judgments of the Supreme Court governing dying declaration wherein it has been observed as follows:

> *"[16]. The situation in which a man is on death bed is so solemn and serene when he is dying the grave position in which he is placed, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Besides should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eye-witness in a serious crime, the exclusion of the statement would leave the Court without a scrap of evidence.*

[17]. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailants. Once the Court is satisfied that the declaration was true and voluntary undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. The Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under :

(i)There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Manu Raja v. State of U.P., 1976 (2) SCR 764 : (AIR 1976 SC 2199)).

(ii)If the Court is satisfied that the dying declaration is true and voluntary, it can base conviction on it, without corroboration. (State of U.P. v. Ram Sagar Yadav, AIR 1985 SC 416; Ramavati Devi v. State of Bihar, AIR 1983 SC 164).

(iii)This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (Rama Chandra Reddy v. Public Prosecutor, AIR 1976 SC 1994).

(iv)Where dying declaration is suspicious,

it should not be acted upon without corroborative evidence. (Rasheed Beg v. State of Madhya Pradesh, 1974 (4) SCC 264).

(v)Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected. (Kake Singh v. State of M.P., AIR 1982 SC 1021).

(vi)A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P., 1981 SCC (Cri.) 581).

(vii)Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurthi Laxmipati Naidu, AIR 1981 SC 617).

(viii)Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (Surajdeo Oza v. State of Bihar, AIR 1979 SC 1505).

(ix)Normally, the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye-witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanahau Ram v. State, AIR 1988 SC 912).

(x)Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of U.P. v. Madan Mohan, AIR 1989 SC 1519).”

The Court has also held that if plurality of dying declarations could be held to be trustworthy and reliable, they have to be accepted. The three dying declarations in the

instant case have to be considered in the light of the above principles, to ascertain the truth with reference to all the dying declarations made by the deceased Champaben.

18. The first dying declaration is Exh.32, in the form of history narrated to the Medical officer. It was recorded by Dr. Bhavin Shyamlal Shah, who has been examined at Exh.30. He has deposed that on 26.11.2003, at 7:50 in the morning when he was on duty as C.M.O., Champaben had been brought by her brother-in-law Anopsinh Raisinh Parmar for treatment of the burn injuries sustained by her on her entire body. He has further deposed that she was conscious and had narrated her history that while she was sleeping at home, her husband had sprinkled kerosene on her and set her afire. He has further deposed that before narrating the history she was well oriented as regards the incident, the time, place and circumstances. He has deposed that her entire body, except the soles of her feet had sustained one to three degree burns. He has also deposed that the smell of kerosene was emanating from her hair. He has further deposed that the patient had been admitted to Dr. Anil Chhada's Unit for further treatment. He has produced the Indoor Case papers vide Exh.33 and has deposed that Champaben had also given the following history regarding the incident before the concerned Doctor, which is recorded as under “Alleged H/O homicidal Burns on 26.11.03 at around 6:00 A.m.

When her husband burnt her with kerosene at her home at Mafabhai Ni Chali Vadaj". This witness has been subjected to extensive cross examination, however, the defence has not been able to bring out anything to shake his credibility.

19. The second dying declaration is Exh.37. This was recorded by PW-15 Shri Shanabhai Mulabhai Parmar, who has been examined at Exh.35. As per his testimony upon receipt of vardhy (Exh.36) from the P.S.O. at Naranpura Police Station, he had gone to the Burns Department of the Civil Hospital. Champaben was lying on the bed with severe burns. She was able to speak and was fully conscious. He had inquired about the incident and she had given her complaint (Exh.37) in detail. As per her complaint she was sleeping at home when her husband had sprinkled kerosene on her and set her ablaze. She had stated that her husband's name was Gulabsinh Balusinh. He has further deposed that after recording her statement he had read it over to her and she had put her thumb mark in his presence. He has deposed that after recording the FIR, he had been entrusted with the investigation. He had sent yadi (Exh.25) to the Executive Magistrate for recording the dying declaration, after obtaining the endorsement from the Doctor that the patient was fully conscious and is in a position to speak. This witness has also been subjected to lengthy cross-examination, however, nothing has

come out in the cross examination to shake his testimony.

20. In her complaint the deceased has stated that she was married a long time ago in her childhood as per the customs of their caste. Her husband owned a rickshaw and did not drive it properly and whatever he earned by way of rickshaw fare he used to squander away after liquor and gambling, due to which there were frequent quarrels and she had often gone to her parents home. Lastly about six months ago she had gone to her parents' home, however, a week ago the accused had promised to maintain her properly and had brought her home. However, he did not give up his old habits and also did not give her any money for running the home, therefore there were frequent quarrels and her husband also used to beat her up. On 26.11.03 in the morning at 6 O' Clock her husband got up and poured kerosene on her while she was sleeping on the cot and set her ablaze. She has stated that her husband had subjected her to harassment and cruelty and ultimately tried to kill her.

21. The third dying declaration has been recorded by the Executive Magistrate PW-11, Shri Vishnuprasad Labhshankar Trivedi, who has been examined at Exh.23. He has deposed that he had received a written police yadi from the Naranpura Police Station at 11:30 hours for recording the statement of Champaben Gulabbhai

Parmar at the Civil Hospital, Burns Department. On the basis of the said Yadi (Exh.25) he went to the Civil Hospital. He reached the hospital at about 12:00 O'clock and went to the Burns Department where Champaben had been admitted. He asked the people who were present there to go out and there after recorded the dying declaration in question answer form. As per the reply given by the victim, she has stated that, on 26.11.2003, in the morning, her husband had consumed liquor and sprinkled kerosene on her and set her afire. He had been threatening her since two to three days. Moreover, both of them were living alone in the house and there were frequent quarrels. The witness has further deposed that he had read over the statement to her and she had put her thumb mark on the same, and he has also put his signature. He has deposed that she had given her statement voluntarily and that before recording her statement he had ascertained that the patient was fully conscious. He has produced the original declaration at Exh.26. In the entire cross examination the defence has not been able to bring out anything to discredit his evidence.

22. Now looking to the testimony of the aforesaid three witnesses, they all support the case of the prosecution that as per the dying declaration of the complainant deceased Champaben, her husband (the accused) had poured kerosene on her while she was sleeping in a cot

and set her ablaze with help of a matchstick. There is no marked discrepancy in the dying declarations recorded by the said witnesses. All the three witnesses are independent witnesses who had neither personal interest in the deceased nor any enmity against the accused. All the three witnesses have totally supported the case of the prosecution and the defence during the course of cross-examination has not been able to corrode the credibility of the said witnesses. There is no material to show that the dying declarations were the result or product of imagination, tutoring or prompting. On the contrary, the same appear to have been made by the deceased voluntarily. The dying declarations recorded by the aforesaid three witnesses corroborate each other are consistent, trustworthy and have credibility and there is no cause or reason to disbelieve them.

23. It has been contended on behalf of the appellant that the dying declaration recorded by the Executive Magistrate does not bear the endorsement of the Doctor that the patient is fully conscious and is able to speak. A Constitution Bench has in the case of *Laxman v. State of Maharashtra* (2002) 6 SCC 710 has interalia held that where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately

holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise. In the instant case the Executive Magistrate has proved by his testimony that the deceased was conscious and was fit to make a statement and that the statement was made voluntarily. In the circumstances, the said contention does not merit acceptance.

24. It has also been contended that the deceased has suffered from extensive burn injuries to the extent of 100% and more particularly had sustained burn injuries on the lips and hence could not possibly have given the dying declarations. In this regard the Supreme Court in the case of *P.V. Radhakrishna v. State of Karnataka*, (2003) 6 SCC 443, while dealing with the question as to whether the percentage burns suffered is a determinative factor to affect the credibility of the dying declaration and improbability of its recording, has held that there is no hard-and-fast rule of universal application in this regard. Much would depend upon the nature of the burn, part of the body affected by the burn, impact of the burn on the faculties to think and convey the idea or facts coming to mind and other relevant factors. Percentage of burns alone would not determine the probability or otherwise of making the dying declaration. Physical state or injuries

on the declarant do not themselves become determinative of mental fitness of the declarant to make the statement.

25. In the facts of the present case the prosecution has been able to prove by leading cogent and reliable evidence that the deceased was in control of her faculties to think, so as to convey the facts coming to her mind. In the circumstances, there being no merit in the contention raised on behalf of the appellant the same is required to be rejected.

26. Insofar as the death of the deceased being a homicidal death, the same has not been challenged by the learned Advocate for the appellant, hence, we do not enter into the merits of this aspect. Suffice it to say that the prosecution has been able to prove that the death of the deceased is a homicidal death through the testimony of PW-10 Dr. Kishanlal Ramabhai Solanki, who has been examined at Exh.17 along with the testimony of the aforesaid three witnesses before whom the deceased had given her dying declaration. Dr.Solanki has deposed that he had carried out the post mortem of the deceased and produced the post mortem report (Exh.22). He has deposed that the deceased had suffered extensive 1st and 3rd degree burn injuries all over her body and that, the burn injuries were ante mortem. He has further deposed that the cause of death was “Shock due to Extensive

Burns over the body”.

27. As discussed above, we have carefully gone through the three dying declarations and we are of the opinion that all the three dying declarations are reliable, trustworthy and free from doubt. At the time of recording the dying declarations, the deceased was well oriented, fully conscious and a clear-cut opinion has been given by the doctor to that effect. The concerned person has taken proper care and caution to ensure that relatives and other persons are not present at the time of recording dying declarations. It has, therefore, been established that there were no opportunities to tutor the deceased prior to recording her statement.

28. In short, the ingredients stipulated by the Apex Court in the case of *Paniben v. State of Gujarat* (supra) as regards the reliability of a dying declaration have been fully satisfied and duly established by the prosecution through the testimony of the three witnesses who have recorded the dying declarations. Apart from that, these witnesses are independent persons who have recorded the dying declarations while discharging their duties and, therefore, there is no reason to disbelieve their evidence. We are, therefore, satisfied that the deceased was in a fit state of mind, and that the statement of the deceased was not a result of either tutoring, prompting or a product of

imagination. It is a settled law that once the Court is satisfied that the dying declaration is true and voluntary, it can base its conviction without any further corroboration. However, as stated hereinabove, the prosecution has also been able to furnish corroborative evidence in support of the dying declarations.

29. For the foregoing reasons, in our opinion, the trial Court was justified in placing reliance on the dying declarations for the purpose of convicting the accused-appellant for the offences punishable under sections 302 and 498A of the Indian Penal Code. We find no infirmity to warrant interference in this appeal, which is accordingly, summarily dismissed.

30. Record and proceedings to be sent back to the trial Court forthwith.

[R.P.DHOLAKIA, J.]

[HARSHA DEVANI, J.]

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